
United States Court of Appeals
for the
Fifth Circuit

Case No. 13-31097

WANDA ROGERS,

Plaintiff-Appellant,

– v. –

BROMAC TITLE SERVICES, L.L.C., doing business as Platinum Title
& Settlement Services, L.L.C.; TITLE RESOURCE GROUP, L.L.C.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

RECORD EXCERPTS

ALAN FISHER KANSAS, ESQ.
Attorney for Plaintiff-Appellant
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TAB 1

**U. S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:12-cv-02493-HGB-JCW
Internal Use Only**

Rogers v. Bromac Title Services, LLC et al
Assigned to: Judge Helen G. Berrigan
Referred to: Magistrate Judge Joseph C. Wilkinson, Jr
Cause: 28:1875 Juror Protection Act

Date Filed: 10/12/2012
Date Terminated: 09/26/2013
Jury Demand: Plaintiff
Nature of Suit: 790 Labor: Other
Jurisdiction: Federal Question

Plaintiff

Wanda Rogers

represented by **Alan F. Kansas**
Law Office of Alan Kansas, LLC
1801 Carol Sue Ave.
Terrytown, LA 70056
504-210-1150
Email: alan@alankansaslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Bromac Title Services, LLC
doing business as
Platinum Title & Settlement Services,
LLC

represented by **Kim M. Boyle**
Phelps Dunbar, LLP (New Orleans)
Canal Place
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ATTORNEY TO BE NOTICED

Defendant

Title Resource Group, LLC

represented by **Kim M. Boyle**
(See above for address)

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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Brandon E. Davis
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/12/2012	<u>1 (p.8)</u>	COMPLAINT with jury demand against All Defendants (Filing fee \$ 350 receipt number 053L-3690209) filed by Wanda Rogers. (Attachments: # <u>1 (p.18)</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons)(Kansas, Alan) (Entered: 10/12/2012)
10/12/2012	2	Initial Case Assignment to Judge Helen G. Berrigan and Magistrate Judge Joseph C. Wilkinson, Jr. (mmv,) (Entered: 10/12/2012)
10/15/2012	<u>3 (p.23)</u>	Summons Issued as to Bromac Title Services, LLC, Title Resource Group, LLC. (Attachments: # <u>1</u> Summons Title Resource Group)(plh,) (Entered: 10/15/2012)
01/04/2013	<u>4 (p.27)</u>	<i>AFFIRMATIVE DEFENSES</i> and ANSWER to <u>1 (p.8)</u> Complaint by Bromac Title Services, LLC, Title Resource Group, LLC.(Davis, Brandon) (Entered: 01/04/2013)
01/04/2013	<u>5 (p.37)</u>	Statement of Corporate Disclosure by Bromac Title Services, LLC, Title Resource Group, LLC identifying Corporate Parents Realogy Holdings Corp., Title Resource Group Affiliates Holdings LLC, L & B Title LLC, Latter and Blum Holding, LLC, Title Resource Group Holdings LLC, TRG, Realogy Services Group LLC, Realogy Group LLC, Realogy Intermediate Holdings LLC for Bromac Title Services, LLC (Davis, Brandon) Modified on 1/7/2013 to add additional corporate parents (plh,). (Entered: 01/04/2013)
01/07/2013	6	Correction of Docket Entry by Clerk re <u>4 (p.27)</u> Answer to Complaint; **Document's signature line is either incomplete or blank. All future documents must reflect either an original signature or an electronic signature of the filing attorney following the format 's/ (attorney name)'. No further action is necessary.** (plh,) (Entered: 01/07/2013)
01/07/2013	7	Correction of Docket Entry by Clerk re <u>5 (p.37)</u> Statement of Corporate Disclosure; **Filing attorney did not enter Latter and Blum Holding, LLC, Title Resource Group Holdings LLC, TRG, Realogy Services Group LLC, Realogy Group LLC, Realogy Intermediate Holdings LLC as a corporate parent(s) at the prompt 'Search for a corporate parent or other affiliate'. Clerk took corrective action.** (plh,) (Entered: 01/07/2013)
01/10/2013	<u>8 (p.39)</u>	NOTICE of Scheduling Conference set for 1/24/2013 10:30 AM before courtroom deputy by telephone, by Clerk.(kac,) (Entered: 01/10/2013)
01/24/2013	<u>9 (p.41)</u>	SCHEDULING ORDER: Telephone Status Conference set for 8/29/2013 09:15 AM before Judge Helen G. Berrigan. Final Pretrial Conference set for 10/3/2013 09:00 AM before Judge Helen G. Berrigan. Jury Trial set for 10/21/2013 10:00 AM before Judge Helen G. Berrigan. Signed by Clerk for Judge Helen G. Berrigan on 01/24/2013. (Attachments: # <u>1</u> Pretrial Notice Form)(kac,) (Entered: 01/24/2013)

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05/23/2013	<u>10 (p.53)</u>	**ATTORNEY REFILED, SEE RECORD DOC 11** EXPARTE/CONSENT Joint MOTION for Protective Order by Bromac Title Services, LLC, Title Resource Group, LLC. Motion(s) referred to Joseph C. Wilkinson, Jr. (Attachments: # <u>1</u> Proposed Order)(Davis, Brandon) Modified on 5/24/2013 (plh,). (Entered: 05/23/2013)
05/23/2013	<u>11 (p.66)</u>	EXPARTE/CONSENT Joint MOTION for Protective Order by Bromac Title Services, LLC, Title Resource Group, LLC, Wanda Rogers. Motion(s) referred to Joseph C. Wilkinson, Jr. (Attachments: # <u>1</u> Proposed Order)(Davis, Brandon) Modified filer on 5/24/2013 (plh,). (Entered: 05/23/2013)
05/24/2013	12	Correction of Docket Entry by Clerk re <u>10 (p.53)</u> Joint MOTION for Protective Order ; **This is a duplicate filing of document 11 and will be noted as such. No further action is necessary.** (plh,) (Entered: 05/24/2013)
05/24/2013	13	Correction of Docket Entry by Clerk re <u>11 (p.66)</u> Joint MOTION for Protective Order ; **Filing attorney did not select Wanda Rogers as a filer(s). Clerk added filer(s).** (plh,) (Entered: 05/24/2013)
05/28/2013	<u>14 (p.79)</u>	AGREED PROTECTIVE ORDER. Signed by Magistrate Judge Joseph C. Wilkinson, Jr on 5/28/13.(tbl) (Entered: 05/28/2013)
08/05/2013	<u>15 (p.90)</u>	Exhibit List by Bromac Title Services, LLC, Title Resource Group, LLC. (Boyle, Kim) (Entered: 08/05/2013)
08/05/2013	<u>16 (p.102)</u>	**ATTORNEY REFILED; SEE RECORD DOC #17** Witness List by Bromac Title Services, LLC, Title Resource Group, LLC. (Boyle, Kim) Modified on 8/6/2013 (plh,). (Entered: 08/05/2013)
08/05/2013	<u>17 (p.106)</u>	Witness List by Bromac Title Services, LLC, Title Resource Group, LLC. (Boyle, Kim) (Entered: 08/05/2013)
08/05/2013	<u>18 (p.110)</u>	Exhibit List by Wanda Rogers. (Kansas, Alan) (Entered: 08/05/2013)
08/05/2013	<u>19 (p.116)</u>	Witness List by Wanda Rogers. (Kansas, Alan) (Entered: 08/05/2013)
08/06/2013	20	Correction of Docket Entry by Clerk re <u>16 (p.102)</u> Witness List; **This is a duplicate filing of document 17 and will be noted as such. No further action is necessary.** (plh,) (Entered: 08/06/2013)
08/06/2013	21	Correction of Docket Entry by Clerk re <u>18 (p.110)</u> Exhibit List; **Caption is incomplete. All future filings must include case number, Judge and Magistrate in the Caption.** (plh,) (Entered: 08/06/2013)
08/13/2013	<u>22 (p.119)</u>	MOTION for Summary Judgment by Bromac Title Services, LLC, Title Resource Group, LLC. Motion set for 8/28/2013 09:30 AM before Judge Helen G. Berrigan. (Attachments: # <u>1 (p.121)</u> Statement of Contested/Uncontested Facts, # <u>2 (p.128)</u> Memorandum in Support, # <u>3 (p.153)</u> Exhibit 1, # <u>4 (p.159)</u> Exhibit 2, # <u>5 (p.160)</u> Exhibit 3, # <u>6 (p.161)</u> Exhibit 4, # <u>7 (p.162)</u> Exhibit 5, # <u>8 (p.163)</u> Exhibit 6, # <u>9 (p.164)</u> Exhibit 7, # <u>10 (p.165)</u> Exhibit 8, # <u>11 (p.166)</u> Exhibit 9, # <u>12 (p.167)</u> Exhibit 10, # <u>13 (p.168)</u> Exhibit 11, # <u>14 (p.169)</u> Exhibit 12, # <u>15 (p.170)</u> Exhibit 13, # <u>16 (p.171)</u> Exhibit 14, # <u>17 (p.172)</u> Exhibit 15, # <u>18 (p.174)</u> Exhibit 16, # <u>19 (p.175)</u> Exhibit 17, # <u>20 (p.176)</u> Exhibit 18, # <u>21 (p.177)</u> Exhibit 19, # <u>22 (p.178)</u> Exhibit 20, # <u>23</u> Exhibit 21, # <u>24</u> Exhibit 22, # <u>25</u> Exhibit 23, # <u>26</u> Exhibit 24, # <u>27</u> Exhibit 25, # <u>28</u> Exhibit 26, # <u>29</u> Exhibit 27, # <u>30</u> Exhibit 28, # <u>31</u> Exhibit 29, # <u>32</u> Exhibit 30, # <u>33</u> Exhibit 31, # <u>34</u>

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		Notice of Submission)(Davis, Brandon) (Entered: 08/13/2013)
08/13/2013	<u>23</u> (p.278)	**DEFICIENT** MOTION to Compel by Wanda Rogers. Motion(s) referred to Joseph C. Wilkinson, Jr. Motion set for 8/28/2013 11:00 AM before Magistrate Judge Joseph C. Wilkinson Jr.. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1 through 6, # <u>3</u> Notice of Submission, # <u>4</u> Request for Oral Argument)(Kansas, Alan) Modified on 8/14/2013 (plh,). (Entered: 08/13/2013)
08/13/2013	<u>24</u> (p.358)	MOTION for Partial Summary Judgment by Wanda Rogers. Motion set for 8/28/2013 09:30 AM before Judge Helen G. Berrigan. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1 & 2, # <u>3</u> Notice of Submission, # <u>4</u> Request for Oral Argument)(Kansas, Alan) (Additional attachment(s) added on 8/23/2013: # <u>5</u> Sealed exhibits) (plh,). (Entered: 08/13/2013)
08/13/2013	<u>25</u> (p.392)	Request/Statement of Oral Argument by Wanda Rogers regarding <u>24</u> (p.358) MOTION for Partial Summary Judgment . (plh,) (Entered: 08/14/2013)
08/14/2013		NOTICE OF DEFICIENT DOCUMENT: re <u>23</u> (p.278) Motion to Compel. **Reason(s) of deficiency: Certificate stating matter cannot be amicably resolved not provided; ALSO, when refile, the Request for Oral Argument must be filed as a separate document and not an attachment to the Motion.** For corrective information, see section(s) D09 on http://www.laed.uscourts.gov/cmecf/Deficiency/deficiency.htm Attention: Document must be refiled in its entirety within seven(7) calendar days. Otherwise, it may be stricken by the court without further notice. Deficiency remedy due by 8/21/2013. (plh,) (Entered: 08/14/2013)
08/14/2013	26	Correction of Docket Entry by Clerk re <u>24</u> (p.358) MOTION for Partial Summary Judgment ; **Filing attorney attached a Request/Statement for Oral Argument to this motion instead of filing it as a separate entry. Clerk took corrective action by separating the request and docketing it as a separate entry, record doc #25. All future requests for oral argument must be filed separately.** (plh,) (Entered: 08/14/2013)
08/14/2013	<u>27</u> (p.393)	ORDERED that counsel for defendant provide a hard copy to the chambers of the undersigned by 4:30 p.m. on August 16, 2013 re <u>22</u> (p.119) MOTION for Summary Judgment. Signed by Judge Helen G. Berrigan on 08/14/2013.(kac,) (Entered: 08/14/2013)
08/20/2013	<u>28</u> (p.394)	ORDERED that there WILL BE ORAL ARGUMENT on 8/28/2013 09:30 AM before the undersigned re <u>22</u> (p.119) MOTION for Summary Judgment and <u>24</u> (p.358) MOTION for Partial Summary Judgment. Signed by Judge Helen G. Berrigan on 08/20/2013.(kac,) (Entered: 08/20/2013)
08/20/2013	<u>29</u> (p.395)	RESPONSE/MEMORANDUM in Opposition filed by Bromac Title Services, LLC, Title Resource Group, LLC re <u>23</u> (p.278) MOTION to Compel . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12)(Davis, Brandon) (Entered: 08/20/2013)
08/20/2013	<u>30</u> (p.527)	RESPONSE/MEMORANDUM in Opposition filed by Bromac Title Services, LLC, Title Resource Group, LLC re <u>24</u> (p.358) MOTION for Partial Summary Judgment . (Attachments: # <u>1</u> Statement of Contested/Uncontested Facts, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit

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		16, # <u>18</u> Exhibit 17, # <u>19</u> Exhibit 18, # <u>20</u> Exhibit 19, # <u>21</u> Exhibit 20, # <u>22</u> Exhibit 21, # <u>23</u> Exhibit 22, # <u>24</u> Exhibit 23, # <u>25</u> Exhibit 24)(Davis, Brandon) (Entered: 08/20/2013)
08/20/2013	<u>31</u> (p.636)	RESPONSE to Motion filed by Wanda Rogers re <u>22</u> (p.119) MOTION for Summary Judgment . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 4, # <u>3</u> Exhibit 5, # <u>4</u> Exhibit 6, # <u>5</u> Exhibit 2, # <u>6</u> Exhibit 8, # <u>7</u> Exhibit 3)(Kansas, Alan) (Additional attachment(s) added on 8/22/2013: # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 13) (plh,). (Additional attachment(s) added on 8/23/2013: # <u>13</u> Sealed exhibits) (plh,). (Entered: 08/21/2013)
08/21/2013	<u>32</u> (p.915)	**DOCUMENT FILED IN ERROR; EXHIBITS HAVE BEEN ATTACHED TO RECORD DOC #31** RESPONSE to Motion filed by Wanda Rogers re <u>22</u> (p.119) MOTION for Summary Judgment . (Attachments: # <u>1</u> Exhibit 7, # <u>2</u> Exhibit 9, # <u>3</u> Exhibit 10, # <u>4</u> Exhibit 13, # <u>5</u> Exhibit 11)(Kansas, Alan) Modified on 8/22/2013 (plh,). (Entered: 08/21/2013)
08/21/2013	<u>33</u> (p.996)	MOTION to Compel by Wanda Rogers. Motion(s) referred to Joseph C. Wilkinson, Jr. Motion set for 8/28/2013 11:00 AM before Magistrate Judge Joseph C. Wilkinson Jr.. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1-6, # <u>3</u> Notice of Submission)(Kansas, Alan) (Entered: 08/21/2013)
08/21/2013	<u>34</u> (p.1075)	Request/Statement of Oral Argument by Wanda Rogers regarding <u>33</u> (p.996) MOTION to Compel (Kansas, Alan) (Entered: 08/21/2013)
08/21/2013	<u>35</u> (p.1076)	ORDER. At the request of counsel for plaintiff, Record Doc. No. 34, and pursuant to Local Rule 78.1, oral argument on plaintiff's Motion to Compel, Record Doc. No. 33, is hereby set on AUGUST 28, 2013 at 11:00 a.m. before Magistrate Judge Joseph C. Wilkinson, Jr. Signed by Magistrate Judge Joseph C. Wilkinson, Jr on 8/21/13.(tbl) (Entered: 08/21/2013)
08/22/2013	<u>36</u> (p.1077)	EXPARTE/CONSENT MOTION to Seal Document , MOTION Supplement Record by Wanda Rogers. (Attachments: # <u>1</u> Proposed Order)(Kansas, Alan) (Entered: 08/22/2013)
08/22/2013	37	Correction of Docket Entry by Clerk re <u>32</u> (p.915) Response to Motion; **Document was filed in error. Main document is a duplicate to record doc #31 and exhibits have been added as attachments to record doc #31.** (plh,) (Entered: 08/22/2013)
08/22/2013	<u>38</u> (p.1081)	ORDERED that oral argument re <u>22</u> (p.119) MOTION for Summary Judgment and <u>24</u> (p.358) MOTION for Partial Summary Judgment is CANCELED. The motions will be taken under advisement on the briefs without oral argument. Signed by Judge Helen G. Berrigan on 08/22/2013.(kac,) (Entered: 08/22/2013)
08/23/2013	<u>39</u> (p.1082)	ORDER granting <u>36</u> (p.1077) Motion to File Documents Under Seal and to Supplement Record as set forth in document. Signed by Judge Helen G. Berrigan on 08/23/2013. (kac,) (Entered: 08/23/2013)
08/26/2013	<u>40</u> (p.1084)	EXPARTE MOTION for Leave to File <i>Reply Memorandum in Support of Motion for Summary Judgment</i> by Bromac Title Services, LLC, Title Resource Group, LLC. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Proposed Pleading, # <u>3</u> Exhibit)(Davis, Brandon) Modified text on 8/27/2013 (plh,). (Entered: 08/26/2013)

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08/27/2013	<u>41</u>	Correction of Docket Entry by Clerk re <u>40 (p.1084)</u> MOTION for Leave to File <i>Reply Memorandum in Support of Motion for Summary Judgment</i> ; **Filing attorney should have selected 'Yes' at the question 'Is this an Exparte/Consent Motion Y/N?'. Clerk modified docket text to reflect 'Exparte'; Filing attorney did not select category 'Proposed Pleading' when attaching document for which leave to file is being requested. Clerk took corrective action.** (plh,) (Entered: 08/27/2013)
08/27/2013	<u>42 (p.1122)</u>	ORDER granting <u>40 (p.1084)</u> Motion for Leave to File Reply Memorandum in Support of Motion for Summary Judgment. Signed by Judge Helen G. Berrigan on 08/27/2013. (kac,) (Entered: 08/27/2013)
08/27/2013	<u>43 (p.1123)</u>	REPLY Memo in Support filed by Bromac Title Services, LLC re <u>22 (p.119)</u> MOTION for Summary Judgment. (Attachments: # <u>1</u> Exhibit)(kac,) (Entered: 08/27/2013)
08/28/2013	<u>44 (p.1158)</u>	EXPARTE/CONSENT MOTION for Leave to File <i>Response Memorandum</i> by Wanda Rogers. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Proposed Pleading)(Kansas, Alan) (Entered: 08/28/2013)
08/28/2013	<u>45 (p.1167)</u>	Minute Order. Proceedings held before Magistrate Judge Joseph C. Wilkinson, Jr: Plaintiff's Motion to Compel, Record Doc. No. 33, is GRANTED IN PART, DISMISSED AS MOOT IN PART AND DENIED IN PART as set forth herein. (tbl) (Entered: 08/28/2013)
08/29/2013	<u>46 (p.1170)</u>	ORDER granting <u>44 (p.1158)</u> Motion for Leave to File Response to Defendants' Reply Memo. Signed by Judge Helen G. Berrigan on 08/28/2013. (kac,) (Entered: 08/29/2013)
08/29/2013	<u>47 (p.1171)</u>	RESPONSE to Reply Memo in Support filed by Wanda Rogers re <u>22 (p.119)</u> MOTION for Summary Judgment. (kac,) (Entered: 08/29/2013)
09/04/2013	<u>48 (p.1177)</u>	Minute Entry for proceedings held before Magistrate Judge Joseph C. Wilkinson, Jr: At my request, a telephone conference was conducted before me concerning counsel's request to set a settlement conference. The court commends counsel for and appreciates their disclosure to me of circumstances that may or may not suggest my recusal from this matter under 28 U.S.C. 455(a). Counsel will confer with their clients and jointly advise me as soon as possible whether all parties will execute a written waiver of disqualification under 28 U.S.C. 455(e). Settlement possibilities were discussed. Counsel will also have further discussions with their clients about settlement and, if the recusal waiver discussed above is executed, they will advise me of their settlement positions, so that I may determine whether scheduling an in-person settlement conference might be beneficial. (tbl) (Entered: 09/05/2013)
09/11/2013	<u>49 (p.1178)</u>	EXPARTE/CONSENT MOTION to Continue <i>Pre-Trial Conference and Trial</i> by Bromac Title Services, LLC, Title Resource Group, LLC. (Attachments: # <u>1</u> Proposed Order)(Davis, Brandon) (Entered: 09/11/2013)
09/13/2013	<u>50 (p.1182)</u>	ORDER granting <u>49 (p.1178)</u> Motion to Continue Pre-Trial Conference Date and Trial Date. Scheduling Conference set for 9/26/2013 11:00 AM before courtroom deputy by telephone. Signed by Judge Helen G. Berrigan on 09/12/2013. (kac,) (Entered: 09/13/2013)
09/20/2013	<u>51 (p.1183)</u>	SECTION 455(e) Waiver accepted by Magistrate Judge Joseph C. Wilkinson, Jr.(tbl) (Entered: 09/20/2013)

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09/20/2013	<u>52</u> (p.1184)	ORDER. In response to my order dated September 4, 2013, Record Doc. No. 48, counsel for all parties have executed a written waiver of disqualification under 28 U.S.C. 455(e) in the captioned case, which has been separately filed in the record. Therefore, this matter will remain pending before me. Having been informed of the parties' settlement positions, and considering the pending motions and the continuance of the trial, I find that the case is not currently in a posture to settle and that no in-person settlement conference will be scheduled at this time. If counsel jointly conclude at any time that a settlement conference conducted by the court would be beneficial, they may contact my office to schedule one. Signed by Magistrate Judge Joseph C. Wilkinson, Jr on 9/19/13. (tbl) (Entered: 09/20/2013)
09/23/2013	<u>53</u> (p.1185)	ORDER AND REASONS granting <u>22</u> (p.119) Motion for Summary Judgment; finding as moot <u>24</u> (p.358) Motion for Partial Summary Judgment. Signed by Judge Helen G. Berrigan on 09/23/2013. (kac,) (Entered: 09/23/2013)
09/26/2013	<u>54</u> (p.1192)	JUDGMENT entered in favor of Bromac Title Services, LLC, Title Resource Group, LLC against Wanda Rogers, dismissing plaintiff's complaint with prejudice. Signed by Judge Helen G. Berrigan on 09/23/2013.(kac,) (Entered: 09/26/2013)
10/21/2013	<u>55</u> (p.1193)	NOTICE OF APPEAL by Wanda Rogers as to <u>54</u> (p.1192) Judgment, <u>53</u> (p.1185) Order on Motion for Summary Judgment, Order on Motion for Partial Summary Judgment. (Filing fee \$ 455, receipt number 053L-4200437.) (Kansas, Alan) (Entered: 10/21/2013)
10/31/2013	<u>56</u> (p.1194)	APPEAL TRANSCRIPT REQUEST by Wanda Rogers re <u>55</u> (p.1193) Notice of Appeal. Transcript is unnecessary for appeal purposes. (Kansas, Alan) Modified text on 10/31/2013 (plh,). (Entered: 10/31/2013)
10/31/2013	<u>57</u> (p.1195)	BILL OF COSTS by Bromac Title Services, LLC, Title Resource Group, LLC. Matter to be submitted on 11/18/2013 before Clerk of Court. Any opposition should be filed within 14 days of the filing of this document. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit, # <u>3</u> Affidavit, # <u>4</u> Notice of Submission)(Boyle, Kim) (Entered: 10/31/2013)

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TAB 2

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA

WANDA ROGERS	*	CIVIL ACTION
	*	
PLAINTIFF	*	NO. 12-2493
	*	
V.	*	SECTION: C (2)
	*	
BROMAC TITLE SERVICES, LLC	*	
d/b/a PLATINUM TITLE &	*	Notice of Appeal
SETTLEMENT SERVICES,	*	
LLC, and TITLE RESOURCE	*	
GROUP, LLC	*	
	*	
DEFENDANTS	*	

NOTICE OF APPEAL

Notice is hereby given that Wanda Rogers, Plaintiff in the above named case, hereby appeals to the United States District Court of Appeals for the Fifth Circuit from the Order and Reasons granting summary judgment entered in this action on September 23, 2013 and the Judgment entered in this action on September 26, 2013.

Respectfully Submitted,
The Law Office of Alan Kansas,
LLC
/s/ Alan Kansas
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Attorney for Plaintiff, Wanda Rogers

Certificate of Service

I, Alan Kansas, certify that above Notice of Appeal was served on all parties of record via the Courts CM/ECF system on this 21st day of October, 2013.

/s/ Alan Kansas

TAB 3

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

WANDA ROGERS

CIVIL ACTION

VERSUS

NUMBER: 12-2493

BROMAC TITLE SERVICES, LLC
d/b/a PLATINUM TITLE & SETTLEMENT
SERVICES, LLC AND TITLE RESOURCE
GROUP, LLC


SECTION: "C" 2

J U D G M E N T

Considering the Court's order and reasons granting defendants' motion for summary judgment, record document no. 53; accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants Bromac Title Services, LLC d/b/a Platinum Title & Settlement Services, LLC and Title Resource Group, LLC and against plaintiff Wanda Rogers, dismissing plaintiff's complaint with prejudice.

New Orleans, Louisiana, this 23rd day of September 2013.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE

TAB 4

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

WANDA ROGERS

CIVIL ACTION

VERSUS

NO. 12-02493

**BROMAC TITLE SERVICE, LLC
d/b/a PLATINUM TILE &
SETTLEMENT SERVICES, LLC
and TITLE RESOURCE
GROUP, LLC**

SECTION "C"(5)

ORDER AND REASONS¹

Before the Court are two motions: (1) defendants' motion for summary judgement; Rec. Doc. 22; and (2) plaintiff's motion for partial summary judgment. Rec. Doc. 24. Both motions are opposed. Rec. Doc. 32; Rec. Doc. 30. Having considered the memoranda of counsel, the record, and the applicable law, the Court grants the defendants' motion for summary judgment and as a result declines to rule on the plaintiff's motion for partial summary judgment for the following reasons.

I. BACKGROUND

Plaintiff, Wanda Rogers, brings this suit against her former employer, Bromac Title Services, and its owner, Title Resource Group, LLC (collectively, "Bromac"). Rec. Doc. 1 at 2-3. The plaintiff alleges that her employment was terminated in violation of 28 U.S.C. §1875, the Jury System Improvement Act. *Id.* at 2. The plaintiff was selected as an alternative Grand Juror beginning on August 19, 2011, and on October 13, 2011, the plaintiff was selected to be an active member of the grand jury, which met on Fridays. Rec. Doc. 1 at 3-4. Her service as a

¹Jennifer Watkins, a third-year student at Tulane University Law School, assisted in part of the preparation of this Order and Reasons.

Grand Juror required the plaintiff to miss work a total of eight Fridays from the time in which her service began on August 19, 2011 until the date on which she was terminated on April 20, 2012. Rec. Doc. 22-2 at 5. However, the plaintiff alleges that despite only missing work on a few occasions, the effect of her jury duty service upon her employment was much greater because she would not know until the Wednesday prior to the Friday in which she would be serving. Rec. Doc. 32 at 13.

After defendant Bromac entered into a joint venture with another company, Latter & Blum, there was an introductory sales meeting of the new personnel for the purpose of soliciting title business from Latter & Blum real estate agents. Rec. Doc. 22-2 at 2-3. Plaintiff made a speech at this meeting, and when she began her speech, she opened with a joke about unprotected sex. Rec. Doc. 22-2 at 2-3; Rec. Doc. 32 at 2-3. After this comment, plaintiff met with supervisors, including the CEO of Latter & Blum to discuss the incident. Rec. Doc. 31-2 at 15. Two days prior to her employment termination, plaintiff spoke at a sales meeting where again her former employer's clients, Latter & Blum real estate agents, were present. Rec. Doc. 1 at 6. At this meeting, plaintiff made a comment to the agents that she would always answer her phone on the weekends, unless she was drinking. *Id.* Plaintiff was terminated for unprofessional behavior two days later. Rec. Doc. 22-2 at 4. Plaintiff maintains that she was terminated because of her jury duty service. Rec. Doc. 1 at 7.

II. LAW AND ANALYSIS

A. Standard of Review for Summary Judgment

Summary judgment is proper only when the record indicates that there is not a "genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

Fed.R.Civ.P.56; *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue of fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1996). When considering a motion for summary judgment, this Court “will review the facts drawing all inferences most favorable to the party opposing the motion.” *Reid v. State Farm Mut. Auto Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986).

The party moving for summary judgment bears the initial burden of “informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 323. “If a moving party meets the initial burden of showing that there is no genuine issue of material fact, the burden shifts to the non-moving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial.” *Engstrom v. First Nat’l Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995) (citing *Celotex*, 477 U.S. at 322-24). In order to satisfy its burden, the non-moving party must put forth competent evidence and cannot rely on “unsubstantiated assertions” and “conclusory allegations.” *Hopper v. Frank*, 16 F.3d 92, 97 (5th Cir. 2994); *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 871-73 (1990). The mere argued existence of a factual dispute will not defeat an otherwise properly supported motion. *See Anderson*, 477 U.S. at 248. “If the evidence is merely colorable, or is not significantly probative,” summary judgment is appropriate. *Id.* at 249-50.

B. Jury Service Protection Act Claim

The Jury System Improvement Act (JSIA) states that “[n]o employer shall discharge . . . any permanent employee by reason of such employee’s jury service, or the attendance or

scheduled attendance in connection with such service, in any court in the United States.” 28 U.S.C. 1875(a). There is very little case law interpreting this statute, and therefore the Court may not draw on Fifth Circuit precedent. Many other district courts have relied on a similarly worded provision from the Age Discrimination in Employment Act ("ADEA") when interpreting the JSIA. *Papila v. Milrose Consultants, Inc.*, No. 09 Civ. 9257(NRB), 2011 WL 6937601, at *12 (S.D.N.Y., Dec. 29, 2011). In *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 176, 129 S.Ct. 2343, 2350, 174 L.Ed.2d 119 (2009), the Supreme Court found that the wording "because of" in ADEA meant that the discrimination at issue in that statute must have occurred "by reason of" or "on account of" the discriminatory act at issue, and therefore to have been the "but for" cause of the adverse employment action. *See also Arnold v. Beth Abraham Health Servs., Inc.*, No. 09-7932 (DLC), 2011 WL 2416877, at *3 (S.D.N.Y. June 16, 2011) (applying the standard from *Gross* to a JSIA claim). The Court applies the same standard here. The plaintiff must prove that her jury service was the “but for” cause of her employment termination. *Gross*, 557 U.S. at 176. The Supreme Court recently expanded the “but for” causation requirement to include Title VII retaliation claims, in addition to ADEA claims. *University of Texas Southwestern Med. Ctr. v. Nassar*, 133 S.Ct. 2517, 2534 (2013). Yet even prior to the expansion of the “but for” causation standard in *Nassar*, lower courts had been applying the “but for” causation standard set forth in *Gross* to JSIA cases because of the similar statutory language between the ADEA and the JSIA (“because of” and “by reason of”). *See Hill v. Hubbell Distribution, Inc.*, No. 1:12cv51, 2013 WL 1726562, at *6 (W.D.N.C. Apr. 19, 2013); *Hackbery v. Daubert, M.D., P.A.*, No. 11-80856, 2012 WL 1600563, at *8 (S.D. Fla. May 7, 2012).

In applying “but for” causation, the plaintiff must prove that the jury service was *the*

reason for her termination, and not merely a motivating factor in it. *Gross*, 557 U.S. at 168; *see also Williams v. District of Columbia*, 646 F. Supp. 2d 103, 109 (D.D.C. 2009) (holding that an employee's four month jury service was *a* motivating factor in her adverse employment action but not *the* motivating factor as required in a JSIA claim because the employer had a legitimate reason for the termination).

Defendants argue that they have proved that plaintiff's employment was not terminated because of her jury duty and are entitled to summary judgment because of this. Rec. Doc. 22-2. Defendants argue that plaintiff's repeated inappropriate comments were the true reason for her termination. *Id.* Defendants also point out that plaintiff herself stated to the Louisiana Workforce Commission that she believed her termination was due to the fact that her employer was seeking to reduce salary expenses. *Id.* at 10-11. Plaintiff argues that her termination was not due to her inappropriate comments because the office culture promoted these sorts of comments and she was never formally reprimanded after the first comment, although she did discuss it with supervisors. Rec. Doc. 32 at 13-14. Rogers argues that the comments made by her colleagues and supervisors about whether she could "get out of" jury duty evidence the fact that the jury duty was the only reason for her termination. *Id.* at 14.

The Court finds here that the defendant has provided undisputed evidence of a legitimate reason for the termination such that plaintiff's jury service cannot be the "but for" causation of her termination. Given the alternative reasons for plaintiff's termination, the Court is suspect that her jury service was even a motivating factor in her termination. The "Notice of Employee Separation" states the cause of Rogers' termination to be that she "made inappropriate comments in client meetings." Rec. Doc. 22, Exh. 5. Neither party disputes that Rogers made a joke about

unprotected sex at a very important client meeting, and then, after being warned about her comments, made another inappropriate comment concerning drinking. Rec. Doc. 22 at 14-15; Rec. Doc. 32 at 3 & 4. Plaintiff has not put forth any evidence to show that her behavior was acceptable in the "office culture" as she claims. Rec. Doc. 32 at 13. The Court finds that the espoused reason for plaintiff's termination is not mere pretext for terminating her because of her jury service. *Evans v. City of Houston*, 246 F.3d 344, 351 (5th Cir. 2001) (discussing pretext in the context of an adverse employment action based on alleged discrimination). Plaintiff was terminated on April 20, 2012 after her second inappropriate comment was made on April 18, 2012. Rec. Doc. 22 at 4. While her intermittent jury service was ongoing at this time, the proximal timing of her termination right after her second inappropriate comments rather than near the time when her active jury service had begun on October 13, 2011, also weighs in favor of finding that there is no merit to Rogers' claim. *Crowley v. Pinebrook, Inc.*, No. 08-3427, 2010 WL 4963004, at *3 (D. Md. Dec. 1, 2010) (finding that the proximal timing of the termination and the protected activity can help rebut an employer's evidence of a legitimate reason for the termination, but that the timing must be coupled with other evidence in order to rebut a legitimate reason for termination). The Court grants summary judgment in favor of the defendant.

Plaintiff's motion for partial summary judgment based on defendant's affirmative defenses has no merit, and in granting summary judgment in favor of the defendant, the Court declines to address plaintiff's motion for partial summary judgment. Rec. Doc. 24.

Accordingly,

IT IS ORDERED that defendant's motion for summary judgment is GRANTED. Rec.

Doc. 22.

IT IS FURTHER ORDERED that plaintiff's motion for partial summary judgment is
MOOT. Rec. Doc. 24.

New Orleans, Louisiana, this 23rd day of September, 2013.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Alan Kansas, certify that above Record Excerpts were served on December 24, 2013 upon

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